ssm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3204 OF 2007

Chandrashekhar Arjun Pillai & Anr. ...Petitioners

Vs.

Sujata Shantaram Mistry ...Respondent.

Mr.R.S.Datar for the petitioners.

Mr. P.M.Mokashi for the respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 25th July, 2007

P.C.

1. In the present petition, the 2nd Joint Civil Judge, Senior Division, Thane by impugned order dated 14th March, 2007 put burden upon the decree holder to establish that the decree is valid for possession and thereby directed the decree holder to adduce their material evidence on this issue.

2.After considering the merit of the matter and in view of the order passed in earlier petition No. 3212 of 2007, it is very clear that the issue No.1 as framed itself is wrong and the burden put upon the decree holder to prove the validity of the said decree which is not correct. In view of this, the issue is

recasted as under:-

. "Does the opponent prove that he has got independent right,title and interest in the flat in possession."

2. Resultantly, the impugned order is quashed and set aside. The Court to proceed on the basis of above re-casted issue No.1 alongwith the other issues. The parties be heard. The petition is, therefore, allowed and is disposed off accordingly.

3. No costs.

(ANOOP V. MOHTA, J.)